No. 11169

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

HAROLD E. STETSON,

Appellant,

vs.

AMERICAN HAWAIIAN STEAMSHIP COMPANY, a Corporation, and THE UNITED STATES OF AMERICA,

Appellees.

APPELLEES' BRIEF.

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TOPICAL INDEX.

TABLE OF AUTHORITIES CITED.

CASES.

STATUTES.

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APPELLEE'S BRIEF.

Statement of the Case.

The United States of America at all times herein mentioned was the owner of the Steamship "Daniel Boone," and the American Hawaiian Steamship Company was acting as general agents for the United States of America in the operation thereof [Ap. 89].

On the 25th day of April, 1942, appellant Harold E. Stetson signed shipping articles at San Pedro, California, as an able-bodied seaman for a foreign voyage on the S.S. "Daniel Boone" not to exceed twelve months [Ap. 36]. That on the 5th day of June, 1942, appellant scratched the back of his finger and, upon the arrival of

the vessel at Melbourne, Australia, was taken to the hospital on June 8, 1942, for treatment [Ap. 56-57]. On June 12, 1942, the master of the vessel instructed the agents at Melbourne to send appellant to Sydney, Australia, to rejoin the vessel if he was physically fit, and on June 13, 1942, the vessel sailed in convoy for Sydney, Australia, arriving there on June 13, 1942. Upon the arrival of the vessel at Sydney her master inquired of the agents there about appellant and was informed that they knew nothing about him. On June 22, 1942, the vessel sailed in convoy for Brisbane, Australia, and, upon arrival there on June 25, 1942, the agents advised the master that the doctor would not allow appellant to rejoin the vessel. The master then left with the agents at Brisbane an account of Stetson's earned wages, giving instructions for the payment thereof [Ap. 113]. Appellant was discharged from the hospital at Melbourne, Australia, on June 25, 1942, and certified fit for duty [Ap. 92]. He was repatriated to the United States and arrived at San Pedro, California, on August 26, 1942. Appellant was paid port bonuses amounting to the sum of $225.00 upon his return voyage, having signed on board the S.S. "Roamer" as a crew member [Ap. 52]. The S.S. "Daniel Boone" arrived at Baltimore, Maryland, on November 30, 1942, and terminated her voyage on December 2, 1942 [Ap. 111]. Appellant received the sum of $462.55, which was in full payment for all wages, overtime, bonuses, etc., from April 25, 1942, to June 8, 1942, the date when he left the vessel at Melbourne, Australia [Ap. 32]. In addition thereto he was paid the further sum of $283.33 in full and complete settlement of any and all claims against the S.S. "Daniel Boone," her owners, agents, etc., and signed a full and complete release therefor on January 9, 1943 [Ap. 45-46].

ARGUMENT.

I.

Trial De Novo.

In Appellant's Brief It Is Urged That This Appeal Being in Admiralty Is a Trial De Novo.

We contend that regardless of a trial de novo, the findings of the District Court should be given great weight.

The apostles on appeal show that all the witnesses testified in open court, and the District Court had the opportunity of seeing and hearing their testimony and continuously propounded questions to the witnesses.

This court in numerous cases has affirmed the well established rule that decisions of the trial court, in admiralty, when based upon testimony heard in open court by the trial judge, will not be disturbed by the Appellate Court.

In the case of *The Ernest H. Meyer* (C. C. A. 9) 84 F. (2d) 496, this court, at page 500, said:

> "Until in this or some other case the Supreme Court shall clear up the doubt, we therefore adhere to the rule as stated in The Andrea F. Luckenbach, (C. C. A. 9), 78 F. (2d) 827, 828, as follows: 'The well established rule is applicable that the decision of the trial court in admiralty cases upon controverted questions of fact will not be disturbed by the appellate court unless clearly against the weight of the evidence.' "

See also:

Thomas v. Pacific Steamship Lines, 84 F. (2d) 506 (C. C. A. 9);
The Shangho, 88 F. (2d) 42 (C. C. A. 9);
The Silver Palm, 94 F. (2d) 754 (C. C. A. 9).

II.

The Findings of Fact and Conclusions of the District Court as to Validity of the Release Executed by Appellant Are Entitled to Great Weight as They Are Based Entirely Upon the Testimony in Open Court, and the Release in the Case at Bar Is Valid and Binding Upon Appellant.

The release involved is set forth in full on pages 45-46 in the apostles on appeal and for the convenience of this Honorable Court, there is attached to appellee's brief, as supplement thereto, a copy of said release, together with a copy of the Findings of Fact and Conclusions of Law of the District Court which is reported in 1945 A. M. C. 1155.

The testimony of Edward M. Slevin, Claim Agent for the American Hawaiian Steamship Company, General Agents for the United States War Shipping Administration, shows in detail all of the surrounding circumstances leading up to the execution of the release by appellant [Ap. 86-95], and after both appellant and Mr. Slevin had thoroughly discussed all of appellant's claims they figured the amount due to be the sum of $283.33. As it was getting late in the afternoon of January 8, 1943, appellant did not have time to go to the Shipping Commissioner's office to sign off for the balance due as wages, etc., up to the time he left the vessel at Melbourne, Australia, on June 8, 1942. Therefore Mr. Slevin advanced appellant an additional sum of $75.00 and appellant agreed to come back the next day and execute a release upon the payment of the balance due after he had signed off the mutual consent before the Shipping Commissioner for the balance due as wages earned while on board the vessel; that appellant returned to the office of Mr. Slevin the next day, and Mr. Slevin handed him the release and asked him to

read it and make sure that he understood it. Appellant read over the release very carefully and said he understood it thoroughly, and he then wrote thereon, in his own handwriting, the following: "I have read and understand this release," and then signed it [Ap. 93-95].

The testimony of appellant shows that he had read the release thoroughly and knew what it contained, and that Mr. Slevin had fully explained it to him and had said that it was a full release of all claims, after which appellant signed the release and the same was witnessed in his presence, and that appellant had written, in his own handwriting, the following: "I have read and understand this release" [Ap. 107-108]. Appellant also testified that he was at the time of the trial a second mate [Ap. 56]. The District Court, after hearing the testimony of appellant and Mr. Slevin relative to the release, made its findings in regard thereto which are fully supported by all the evidence, as follows:

"VIII.

"That on January 8, 1943, libelant called at the office of the American Hawaiian Steamship Company in connection with payment of wages, overtime, voyage bonuses and port bonuses, maintenance, transportation and subsistence which he claimed to be due after he had left the steamship 'Daniel Boone,' and he fully discussed his claim with the Claims Agent of the American Hawaiian Steamship Company, at which time libelant was shown a copy of a letter sent to him by the Maritime War Emergency Board in reply to a letter he had sent to the Board relative to the payment of war bonuses, advising libelant that in accordance with the Board decisions he was not entitled to bonuses on the return voyage as he had signed on board another vessel as a crew member on his return to the United States.

"IX.

"That on January 9, 1943, libelant again called at the office of the American Hawaiian Steamship Company at which time his claims were further discussed and a full release was presented to him for his signature after the claims agent had fully explained to him, that if he signed the release he was releasing any and all claims of every nature whatsoever; that libelant is now an officer in the Merchant Marine and from the way he conducted himself in court and from the language he speaks he is a literate person and fully understood the terms of the release. That libelant read the release and wrote thereon, in his own handwriting, the following: 'I have read and understand this release,' and then signed the release before a witness and received and acknowledged receipt of $283.33 in consideration therefor. Libelant testified that he understood the contents of the release before he signed it; that the release was executed freely, without deception or coercion and was made by libelant with the full understanding of his rights and it was a complete release of all liability for the claims set forth in the libel." [Ap. 121-122.]

We submit, in view of the testimony, that the findings of the District Court as to the validity of the release are entitled to great weight, and the release executed by the appellant is valid and binding on appellant. Appellant in his brief admits that he knew that he was executing a release but attempts to nullify the validity of the release by showing that all the money due appellant was not paid. Furthermore, that at the time the release was executed, only the sum of $17.18 was paid. We submit that appellant was paid amounts from time to time and that the facts surrounding the execution of the release commenced

with the conversation between Mr. Slevin and appellant on January 8, 1943, was finally concluded on January 9, and that during this conversation an additional advance of $75.00 was paid to appellant on account. In the case at bar the testimony shows that appellant was discharged from the hospital on June 25, 1942 [Ap. 57] and was certified fit for duty and, upon his arrival at San Pedro, he was well and in good health [Ap. 92].

In the case of *Garrett v. Moore-McCormack Co.,* 317 U. S. 239, 63 S. Ct. 246, 87 L. ed. 239, 1942 A. M. C. 1645, cited on page 6 of appellant's opening brief, the Supreme Court did not attempt to pass on the legality of the seaman's release then before the Court, but remitted the cause "for action not inconsistent with this opinion."

The question was finally decided in the case of *Garrett v. Moore & McCormack Co.,* 1944 A. M. C. 422, when the Court, upholding the validity of a seaman's release, said at page 427:

> "It should not be concluded, however, that a release made by a seaman is so immunized by the protective cloak of the Admiralty court as to be wholly without any legal effect. Thus, in *The Adonis* (3 C. C. A. 1930), 1930 A. M. C. 1177, at page 1178, 38 F. (2d) 743, the libellant sought to avoid a release on the ground that he was in pain at the time he made it. The court, rejecting the disavowance, said, 'However pain and need of money may have induced him to sign what otherwise is a valid release, these moving considerations, which emanated within himself, not from the casualty company, do not amount, as he contends, to legal duress and undue influence. * * * We realize that a release of this kind is not a bar

preventing inquiry into the seaman's rights. It can always be looked into * * *. But a release of this kind, formally signed, sealed and witnessed, is however, *prima facie* good, and cannot be set aside unless it was obtained by duress, mistake, or * * * fraud.' See also *Spillers v. South Atlantic S. S. Co.* (D. C. Del., 1942), 1942 A. M. C. 1063, 45 F. Supp. 2.

"It would, therefore, follow that the burden imposed by the Admiralty law upon those who seek to assert a release as a bar to an action, does not arise *ab initio,* but is postponed until the *prima facie* validity of the release has been denied. In this sense, therefore, one who would avoid the legal effect of a written release has the burden of proving his claim. *If prima facie the release is valid,* as above indicated, the burden which thereafter devolves upon the party relying upon the release, although described as a 'burden of proof,' is in the stricter sense a burden of proceeding forward with the evidence. This result must follow from the requirement imposed upon the claimant seaman that he prove that he was defrauded: *The Annie L. Mulford* (D. C. E. D. Pa. (1901), 107 Fed. 525.

"If, therefore, the weight of the evidence establishes that the release was fairly entered into and without advantage taken of the seaman, his release, like that of any other individual, is to be sustained. The compelling logic behind this rule is articulated in *Sitchon v. American Export Lines, Inc.* (2 C. C. A. 1940), 1940 A. M. C. 1292, at page 1296, 113 F. (2d) 830 (cert. denied 311 U. S. 705, 1940 A. M. C. 1672); 'Any other result would be no kindness to the seaman, for it would make all settlements dangerous from the employer's standpoint and thus tend to force the seaman more regularly into the courts. * * *'"

The validity of seamen's releases has been brought before the courts on many occasions. It has never been contended successfully that when a seaman executes a release with a full understanding of his rights and after a full disclosure of all the facts, as in the case at bar, such a release is not a valid, subsisting and binding contract. One of the leading cases on the validity of releases is the case of *Bonici v. Standard Oil Co. of New Jersey,* 103 F. (2d) 437, 1939 A. M. C. 585, wherein the court, at page 439, said.

> "* * * nevertheless a release fairly entered into and fairly safeguarding the rights of the seaman should be sustained. Any other result would be no kindness to the seaman, for it would make all settlements dangerous from the employer's standpoint and thus tend to force the seaman more regularly into the courts of admiralty."

In an opinion delivered by Mr. Justice Story in *Harden v. Gordon,* 11 Fed. Cas. 480, No. 6047, at page 487, he states that:

> "When a receipt is given in full of all demands, it is not to be taken in the admiralty as conclusive. It is open to explanation, and upon satisfactory evidence may be restrained in its operation. But the natural presumption is in its favor, and that presumption will prevail, until it is displaced by direct proof or strong circumstances. Indeed in cases of doubtful or conflicting claims, where a compromise takes place, and receipts are given, as final discharges between the

parties, upon deliberate consideration and in good faith, there is the greatest reason to uphold these instruments, for they tend to general repose and security."

A careful reading of the record of the case at bar permits no other view than that appellant thoroughly understood the contents of the instrument which he signed, was well advised of all the facts and circumstances and well knew the consequences of its signing [Ap. 121-122].

Appellant has cited in his opening brief on pages 6, 7 and 8, several cases in which the question of the validity of seamen's releases was before the court.

The cases cited by appellant involved releases which were set aside on the ground of fraud as the seaman did not know the condition of his injuries at the time of the execution of the release and discovered at a later date that the injuries were serious. In each of these cases the court was required to pass on the validity of a release of liability for the seaman's injuries and such releases were set aside on the ground of fraud on a showing that at the time of executing the release the seaman had not been advised of the full extent of his injuries, and therefore, when the seaman's injuries were subsequently discovered to be of a more serious nature than had been supposed at the time of executing the release, the seaman was not precluded by his release from bringing a subsequent suit for the injuries.

Manifestly these cases are not in point. The subject matter involved in the release in question was not beyond

the comprehension of appellant, it did not require the assistance of a competent medical advisor or other especially trained person to advise him. The slight scratch which appellant had previously suffered had completely healed and appellant does not contend that the facts are otherwise than as he fully understood them to be at the time he executed the release.

Furthermore, the District Court found that appellant:

> "* * * is now an officer in the Merchant Marine and from the way he conducted himself in court and from the language he speaks he is a literate person and fully understands the terms of the release. That libelant read the release and wrote thereon, in his own handwriting, the following: 'I have read and understand this release,' and then signed the release before a witness and received and acknowledged receipt of $283.33 in consideration therefor. Libelant testified that he understood the contents of the release before he signed it; that the release was executed freely, without deception or coercion and was made by libelant with the full understanding of his rights and it was a complete release of all liability for the claims set forth in the libel." [Ap. 122.]

It is submitted that the above findings of fact of the District Court are well supported by the evidence and the Court having had an opportunity to observe the demeanor of all the witnesses the findings of the District Court are entitled to great weight.

III.

Appellant Is Not Entitled to the Wages and Overtime He Would Have Earned on the Vessel After He Had Fully Recovered From His Injuries and Was Repatriated Back to the United States.

It is contended in appellant's brief, at pages 9-10, that although appellant was physically able to return to his employment upon his return to the United States, he was prevented from doing so by reason of the failure of the respondent to leave his wages and gear at the port where he was hospitalized and by the failure to pay him the full amount due him upon his return to the United States [Ap. 9-10]. We submit that the testimony of Mr. Slevin shows that appellant desired to take a vacation after his return to the United States [Ap. 101-102]. The fact that he went to work at a date prior to the termination of the voyage of the S.S. "Daniel Boone" on December 2, 1942, and before he received his wages and gear, shows that he could have returned to work at any time he so desired. On pages 10-11 of appellant's brief, it is admitted that this question is unanswered by the cases but that by way of analogy to this situation where a seaman was *wrongfully dismissed before the end of the voyage* his wages are due for the whole voyage or until the period for which he was engaged terminated, if he has not before that time found new and equally lucrative employment.

The facts in the case at bar show that appellant was not wrongfully dismissed but left the vessel and was taken to a hospital on account of a slight injury to his finger [Ap. 56-57].

That appellant is not entitled to overtime for any period that he was not on board the S.S. "Daniel Boone" seems too clear for argument. Overtime is paid to seamen for

work done in addition to their regular duties, for extra work performed. As said in the case of *President Grant-President Jefferson,* 1927 A. M. C. 51, a seaman claiming overtime must plead the regular hours worked and the overtime with particularity as to days and hours, and must show whether the vessel was at sea or in port.

Overtime is extra wages for extra work, payable only in accordance with an agreement entered into between the employer on the one hand and the union representatives of the seaman on the other. A seaman does not become entitled to overtime by signing the articles, nor does any one seaman have any interest or claim to the overtime earned by another. Overtime is paid to each seaman, at an hourly rate, according to the extra number of hours each seaman works outside or in addition to his regular working day.

The shipping articles signed by appellant contain the entire contract between appellant and the master of the S.S. "Daniel Boone." Nowhere in this contract will there be found any right in appellant to overtime arising out of his employment as a seaman of the S.S. "Daniel Boone" [Ap. 75-77].

None of the cases cited by appellant supports any claim for overtime. In *The Walton v. The Neptune,* Fed. Cas. No. 17, 135, the Court was only concerned with the seaman's monthly wage as evidenced by the shipping articles; in the case of *Mason v. Evanisevich* (C. C. A. 9), 131 F. (2d) 858, 1942 A. M. C. 1542, the Court was called upon to determine the share that an injured fisherman was entitled to out of the season's catch; in *Serio v. Ivan,* 1944 A. M. C. 409, an award for loss of earning capacity was made in lieu of an award for loss of wages, and the seaman's base wages were used as the measure thereof; in

The Strom v. Montague, 53 F. Supp. 548, 1944 A. M. C. 122, the Court was concerned with the question of what share an injured fisherman was entitled to out of the season's catch; and in *The Cekalovich v. Ruljanovich* (C. C. A. 9), 1944 A. M. C. 1468, the Court was again required to decide what share an injured fisherman was entitled to out of the season's catch.

IV.

Bonus Payments Are Not Wages, and a Seaman Who Has Been Detached From His Ship for Any Reason Is Not Entitled to Any Bonuses After the Date Such Seaman Became Detached.

Soon after the outbreak of war against the Axis nations the Maritime War Emergency Board was established by the shipowners and the maritime unions signatory to the Statement of Principles. In recognition of the risk undertaken by seamen in the pursuit of their employment, the Maritime War Emergency Board established various war bonuses commensurate with the risk to seamen in the various theaters of the world. The various war bonuses established from time to time was neither static nor uniform. The theory underlying this system of bonuses was that the bonuses would be decreased and increased as the risk to the seamen should vary.

As such war bonuses were not a wage subsidy but rather compensation for the hazard undertaken by the seamen. it was never contemplated that seaman who had not incurred the risk by entering a given war theater should receive the bonus offered by the United States Government as an inducement to seamen to accept the risks of war.

The shipping articles in the case at bar provide, among other things, that:

> "All licensed and unlicensed members of the crew will be paid a War Bonus in accordance with the United States Maritime War Emergency Board Decisions." [Ap. 75.]

The Maritime War Emergency Board advised appellant that he was not entitled to wages and bonuses from the S.S. "Daniel Boone" on his return trip on another vessel as a result of any Board decision [Ap. 43]. The Pacific Coast Regional Counsel for the War Shipping Administration, in its opinion relative to the payment of war bonuses to appellant, said:

> "War bonuses are only payable in accordance with the decisions of that Board. A seaman never has been entitled to any bonuses earned by a vessel after his separation from that vessel." [Ap. 49.]

In connection with the payment of bonuses to appellant, the District Court made its findings as follows:

"VI.

> "That the Shipping Articles signed by libelant for the voyage on board the Steamship 'Daniel Boone' provided for the payment of his wages at the rate of $100.00 per month and War Bonuses in accordance with the United States Maritime War Emergency Board Decisions; that when a seaman enters into an agreement that bonuses shall only be paid in accordance with the United States Maritime War Emergency Board Decisions he realizes that bonuses are not a matter of right except insofar as they are regulated by these decisions, which may change from time to time; that bonuses are inducements earned at various times under the direction of the Maritime

> War Emergency Board Decisions in order to compensate for the greater or lesser hazards to seamen; that libelant, in signing the Articles, agreed that the decisions of the Maritime War Emergency Board shall be the criterion as to whether or not he is entitled to receive bonuses; that it is quite evident, in the established system of bonuses, the Maritime War Emergency Board sought to supply an additional incentive for the taking of the risk; that the Board did not enter into an agreement to the effect that no matter what happened to the particular seaman whether he actually continued on the ship or separated himself from the ship that he was entitled to all the emoluments and all the compensation he might have received had he stayed with the ship." [Ap. 120.]

Appellant has cited several cases in an attempt to support his claim for the payment of the same bonuses as earned by members of the crew aboard the S.S. "Daniel Boone" after he left the vessel (Appellant's Brief pp. 12-13).

The case of *The Leonidas,* 116 F. (2d) 440, 1941 A. M. C. 190, cited by appellant, is not in point since it involves bonuses that were actually earned by the seaman while on board. The question before the Court was not what bonuses the seaman was entitled to, but rather it was a question of collection of bonuses admittedly due. The specific question before the Court was whether or not the seaman was entitled to collect one-half of earned wages under 46 U. S. C. A. Section 597.

This case is further distinguishable from the case at bar since it involved a Greek war bonus rather than an American war bonus.

The case of *The Eleni* (C. C. A. 2), 140 F. (2d) 111, 1942 A. M. C. 1545, cited by appellant, again is distinguishable from the case at bar since it involved a claim not for bonuses earned by the ship after the seaman became detached but rather for bonuses earned by the seaman while on board ship. It also involves a claim for bonuses payable by the Greek Government in Exile. Notwithstanding, however, that this case is distinguishable, the language of the Court would not lend support to appellant's position. The Court, at page 1549, said, after discussing the incidents of the Greek war bonus, "The bonus under such a contract is not a wage."

In the case of *Dasher v. U. S.*, 59 F. Supp. 742, 1945 A. M. C. 100, cited by appellant, it was held that a seaman injured without fault while ashore at a Mediterranean port and off duty is entitled to wages and *applicable war bonus* while in the hospital ashore. It should be noted that this case is distinguishable on two grounds:

(a) The seaman was never discharged from the ship's articles but continued throughout his confinement as a member of the crew, and

(b) The seaman remained in the bonus area and thus was entitled to bonuses from that fact alone rather than from the fact of the ship's entry into a bonus area after the seaman's detachment as in the case at bar.

The case of *Gayner v. The New Orleans,* 54 F. Supp. 25, 1944 A. M. C. 462, cited by appellant, was not a case involving war bonuses. This case involved an agreement entered into between certain collective bargaining representatives and certain ferry boat companies in the San Francisco Bay area. In anticipation of the eventual loss of employment due to the construction of the San Fran-

cisco and Golden Gate bridges this agreement was entered into providing for extra compensation for the employees of the ferry boat companies who should eventually lose their employment. Having satisfied the terms of the agreement, the only issue before the Court was whether a maritime lien arose in favor of these employees for the so-called extra compensation. The Court, in upholding the maritime lien, pointed out that the ferry boat employees had parted with a substantial *quid pro quo*. The case is clearly not in support of appellant's contention for the payment of bonuses.

In the case of *Phillips v. Matson Navigation Co.*, 1945 A. M. C. 940, cited by appellant, the United States District Court, Northern District of California, on August 23, 1945, modified its opinion on reargument (1945 A. M. C. 1153), and in holding that a seaman is not entitled to "war bonuses" while on land, at pages 1153-1154, said:

> "The amount of 'war bonus' to be paid to seamen and the terms conditioning its payment are fixed by the 'Maritime War Emergency Board' (whose members are appointed by the President), created pursuant to agreement between ship operators and the maritime unions. The Shipping Articles governing libellant's employment were signed by him on June 20, 1944. They expressly incorporate therein all decisions of the 'Maritime War Emergency Board.' On June 20, 1944, and at the time of libellant's shore hospitalization, there was in effect decision 2B of the Board to the effect that: 'bonus shall not be payable while a crew member is on land.' *Thus under the express terms of the contract between the parties litigant, libellant is not entitled to war bonus and accordingly the claim therefor is disallowed.*" (Italics ours.)

Therefore, it appears that appellant would have no claim for bonuses after he left the vessel at Melbourne, Australia, as he was not aboard the vessel while she was within any bonus area.

Conclusion.

We respectfully submit that appellant has been paid in full for any and all claims that he had against appellees by reason of the voyage involved but, in any event, the release executed by appellant was a full and complete release of any and all claims set forth in the libel as it was executed by him freely, without deception or coercion and with the full and complete understanding of all of his rights in the matter, and therefore the final decree of the District Court should be affirmed.

Respectfully submitted,

L. K. VERMILLE,
DAN BRENNAN,
OVERTON, LYMAN, PLUMB,
PRINCE & VERMILLE,

Proctors for Appellee American Hawaiian Steamship Company.

CHARLES H. CARR,
United States Attorney.

RONALD WALKER,
Assistant United States Attorney,

Proctors for Appellee, United States of America.

SUPPLEMENT.

Receipt and Release.

Know All Men by These Presents: That the undersigned, Harold Stetson, in consideration of the payment to him of the sum of Two Hundred Eighty-three & 33/100 Dollars (283.33) lawful money of the United States of America, the receipt whereof is hereby acknowledged, does hereby release and forever discharge American-Hawaiian Steamship Company, a corporation, the Steamship "Daniel Boone," its Master, officers, agents, crew, and each of them, the War Shipping Administration, United States of America, and Fireman's Fund Insurance Company, from any and all claims and demands of every nature whatsoever by the undersigned from the beginning of the world to and including the present time, and without limiting this release to any specific claim or claims, whether mentioned herein or not, the undersigned does hereby release said vessel and said parties and each of them from all claims arising out of or in connection with that certain injury and/or illness suffered by the undersigned while employed by said vessel on or about June 5, 1942, including, without limitation however, all claims for damages at law and in admirality, including interest and costs, and for wages, maintenance, cure, transportation, and subsistence, under any act or law, it being the intention of this instrument to acknowledge full and complete settlement and satisfaction for any loss, damage, injury, sickness, or expense, suffered or sustained or claimed by the undersigned, as aforesaid, whether the

same be now existent or known to him, or which may hereafter arise, develop or be discovered.

Dated at San Francisco this 9 day of Jan 1943.

THIS IS A GENERAL RELEASE

I have read and understand this release.

HAROLD STETSON.

E. M. SLEVIN,
Witness.

[Title of Court and Cause.]

Findings of Fact and Conclusions of Law.

The above entitled action came on regularly for trial on the 24th day of May, 1945, before Hon. Leon R. Yankwich, United States District Judge, the libelant being represented by David A. Fall, Esq.; respondent American Hawaiian Steamship Company being represented by Messrs. Overton, Lyman & Plumb and L. K. Vermille, Esq.; and respondent United States of America being represented by Charles H. Carr, Esq., United States Attorney, and Ronald Walker, Esq., Assistant United States Attorney; and evidence, oral and documentary, having been introduced, and the Court having considered the evidence and the law and the arguments of counsel, and being fully advised in the premises, and all proceedings having been duly and regularly taken, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

I.

That libelant was an able bodied seaman on board the steamship "Daniel Boone," having signed thereon or about the 25th day of April, 1942, for a voyage not to exceed twelve months bound for foreign ports unnamed.

II.

That the United States of America was the owner of the steamship "Daniel Boone," and the American Hawaiian Sttamship Company was acting as general agent for the War Shipping Administration in the operation thereof.

III.

That libelant on or about the 5th day of June, 1942, while in the service of said steamship "Daniel Boone," sus-

tained injuries of a minor nature and was taken to a hospital at Melbourne, Australia, on or about the 8th day of June, 1942.

IV.

That after the steamship "Daniel Boone" left libelant at Melbourne, Australia, on or about the 8th day of June, 1942, it made two bonus port calls at the Port of Townsville, Australia, and one bonus port call at the Port of Moresby, for which each able bodied seaman on board the steamship "Daniel Boone" was paid the sum of $125.00 for each of said bonus ports, making a total of $375.00.

V.

That libelant did not rejoin the steamship "Daniel Boone" for the completion of her voyage but was repatriated to the United States of America on board another vessel, having signed thereon as a crew member, and received payment for all bonus ports while on board said vessel; that when libelant arrived in the United States he had completely recovered from his injuries; that the steamship "Daniel Boone" terminated her voyage at Baltimore, Maryland, on or about the 2nd day of December, 1942.

VI.

That the Shipping Articles signed by libelant for the voyage on board the steamship "Daniel Boone" provided for the payment of his wages at the rate of $100.00 per month and war bonuses in accordance with the United States Maritime War Emergency Board Decisions; that when a seaman enters into an agreement that bonuses shall only be paid in accordance with the United States Maritime War Emergency Board Decisions he realizes that bonuses are not a matter of right except insofar as they are regu-

lated by these decisions, which may change from time to time; that bonuses are inducements earned at various times under the direction of the Maritime War Emergency Board Decisions in order to compensate for the greater or lesser hazards to seamen; that libelant, in signing the Articles, agreed that the decisions of the Maritime War Emergency Board shall be the criterion as to whether or not he is entitled to receive bonuses; that it is quite evident, in the established system of bonuses, the Maritime War Emergency Board sought to supply an additional incentive for the taking of the risk; that the Board did not enter into an agreement to the effect that no matter what happened to the particular seaman whether he actually continued on the ship or separated himself from the ship that he was entitled to all the emoluments and all the compensation he might have received had he stayed with the ship.

VII.

That libelant was paid the sum of $462.55 for his full wages, voyage bonuses, overtime and port bonuses while on board the steamship "Daniel Boone" and in addition thereto the further sum of $283.33 for a full and complete release of any and all claims and demands for additional wages, voyage bonuses, overtime, port bonuses, maintenance, cure, transportation and subsistence.

VIII.

That on January 8, 1943, libelant called at the office of the American Hawaiian Steamship Company in connection with payment of wages, overtime, voyage bonuses and port bonuses, maintenance, transportation and subsistence which he claimed to be due after he had left the steamship "Daniel Boone," and he fully discussed his claim with the Claims Agent of the American Hawaiian Steamship Company, at

which time libelant was shown a copy of a letter sent to him by the Maritime War Emergency Board in reply to a letter he had sent to the Board relative to the payment of war bonuses, advising libelant that in accordance with the Board decisions he was not entitled to bonuses on the return voyage as he had signed on board another vessel as a crew member on his return to the United States.

IX.

That on January 9, 1943, libelant again called at the office of the American Hawaiian Steamship Company at which time his claims were further discussed and a full release was presented to him for his signature after the claims agent had fully explained to him, that if he signed the release he was releasing any and all claims of every nature whatsoever; that libelant is now an officer in the Merchant Marine and from the way he conducted himself in court and from the language he speaks he is a literate person and fully understood the terms of the release. That libelant read the release and wrote thereon, in his own handwriting, the following: " have read and understand this release," and then signed the release before a witness and received and acknowledged receipt of $283.33 in consideration therefor. Libelant testified that he understood the contents of the release before he signed it; that the release was executed freely, without deception or coercion and was made by libelant with the full understanding of his rights and it was a complete release of all liability for the claims set forth in the libel.

CONCLUSIONS OF LAW.

The Court makes the following conclusions of law on the findings of fact:

That the libelant Harold E. Stetson is not entitled to recover any sum whatsoever from the respondent American Hawaiian Steamship Company, a corporation, and The United States of America, or either of them, and that said libel should be dismissed without costs to said respondents.

LEON R. YANKWICH,
United States District Judge.

Approved as to form

DAVID A. FALL,
Proctor for Libelant.